FAX TRANSMISSION

US EPA New England
Office of Environmental Stewardship
1 Congress Street, Suite 1100
Boston, MA 02114-2023
Fax: (617)918-1809

To: Deanna Chang
Fax #: 202 616 2427
From: Audrey Zucker
Phone: _____
Subject: _____

Date: _____
Pages: 4, including this cover sheet.

Shpack
11.9

COMMENTS:

SDMS DocID **456151**

Please contact (617)918-1700 if you do not receive the proper number of pages with this facsimile. Thank you.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NEW YORK 10174
www.troutmansanders.com
TELEPHONE: 212-704-6000
FACSIMILE: 212-704-6288

Lee Henig-Elona
lee.henig-elona@troutmansanders.com

Direct Dial:212-704-6114
Direct Fax:212-704-5939

September 21, 2006

Via Federal Express

Melissa Taylor, Remedial Project Manager
U. S. Environmental Protection Agency
Office of Site Remediation and Restoration
1 Congress Street, Suite 1100 (HBO)
Boston, MA 02114-2023

Re: Shpack Landfill Superfund Site

Dear Ms Taylor:

We represent Swank, Inc. ("Swank") in connection with EPA's Special Notice, dated August 15, 2006, pursuant to Section 122(e) of CERCLA, for a Remedial Design/Remedial Action at the Shpack Landfill Superfund Site in Norton, MA and Attleboro, MA (the "Site"), and we are writing to you about Swank's de micromis status.

As you may know, on September 14, 1990, Swank signed an Administrative Order by Consent for Remedial Investigation/Feasibility Study (the "Order") relating to the remedial investigation/feasibility study at the Site. Under then applicable law, Swank faced the possibility of joint and several liability for the entire cost of the Site investigation, as well as for the remedial action at the Site. Accordingly, Swank was compelled to sign the Order and to join the group of potentially responsible parties (the "PRP Group") who undertook the study. Since that time, Swank and its insurance carrier have contributed to the PRP Group and the EPA in excess of $1,110,000 for the costs of the remedial investigation/feasibility study.

However, with the subsequent enactment in 2002 of the *Small Business Liability Relief and Brownsfields Revitalization Act* (the "Act"), relevant statutory exemptions provide relief from CERCLA liability for certain persons, including "de micromis parties" as defined in Section 107(o) of the Act. Swank falls within this statutory exemption for liability for response costs for de micromis parties. The total amount of material contributed to the Site by Swank

(approximately 20 gallons consisting of a mixture of trichloroethylene and oil and/or polishing compound solids (waxes, animal fats, and abrasives)), falls below the statutory limits for de micromis parties, the Site is listed on the EPA's National Priorities List, and all of Swank's disposal of materials occurred prior to April 1, 2001. In that connection, we also refer you to Swank's response of August 26, 2005 to the EPA's Request for Information dated June 28, 2005, which included Swank's prior response to the EPA's 1990 Request for Information (the "Responses"), for additional related information. In sum, as a de micromis party, Swank is now entitled to relief from CERCLA liability. A copy of Swank's Responses are enclosed.

Moreover, even if, for the sake of argument, we assume that Swank falls outside the objective requirements for a statutory exemption as a de micromis party (Swank does not believe it does), there are subjective factors, including EPA discretion in the course of its review of the facts and circumstances relating to the Site, as a result of which Swank would be considered to be a non-exempt de micromis party. As such, Swank is entitled to protection through an administrative settlement with the EPA and a waiver of claims against Swank by the group of settling potential responsible parties ("PRPs") with regard to the Site.

As noted in the Responses and as detailed above, Swank has contributed an insignificant amount of waste to the Site, the impact of which was inconsequential in light of the total amount and type of waste contributed by others.

In addition, there exists a substantial possibility of legal action by the settling PRPs against Swank for contribution, despite Swank's status as a de micromis party. The PRPs that are forming with regard to the remedial action at the Site have been quite aggressive. Of particular concern is that, before the Act, Swank has participated as a member of the PRP Group for the remedial investigation/feasibility study at the Site at an allocation percentage that bore no relation to the relatively small contribution of wastes by Swank to the Site, and Swank has contributed substantial sums, even in times of severe financial distress. Accordingly, due to its prior participation, Swank is in a higher profile position than it would otherwise be if it had not complied with its responsibilities under the Order, and Swank believes the likelihood of action against it by others to compel its financial and other participation is considerable.

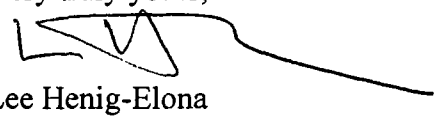
In sum, in light of the immaterial amount of waste contributed by Swank at the Site, the minor impact of that waste, the potential threat of action by PRPs at the Site, and Swank's prior and proposed financial contributions of Swank to the Site, Swank meets the criteria under EPA's policy guidelines for a de micromis settlement and for de micromis protection from PRP contribution and other actions. Accordingly, we respectfully request, on Swank's behalf, that under these unusual circumstances EPA and Swank should promptly enter into a de micromis settlement and that EPA assure Swank that in any future consent decree, Swank will be afforded de micromis protection from PRP contribution and other actions.

However, Swank is not requesting a "zero dollar" settlement, as discussed in EPA's 2002 de micromis settlement policy. Instead, in order to defray both the EPA's transactional costs of settlement and the present and future costs by the EPA with regard to the Site, Swank would be willing to contribute an additional sum of $50,000, making its total extraordinary contributions as a de micromis party with regard to the Site in excess of $1,160,000.

As a de micromis party, and given the equitable purposes of the Act, Swank simply believes it should not be compelled to expend additional amounts with regard to the Site. Even under the EPA's 2002 de micromis settlement policy, the EPA set forth its belief that de micromis parties should not be pursued or compelled to expend amounts to resolve potential liability under CERCLA.

In light of the deadline for an official response to the EPA's August 15, 2006 Special Notice, we would very much appreciate hearing from you at your earliest convenience. Thank you for your consideration.

Very truly yours,



Lee Henig-Elona

LHA:mak
Enclosures

cc: Audrey Zucker, Senior Enforcement Counsel (w/enclosures)
Susan Studlien, Director, Office of Site
Remediation and Restoration (w/enclosures)